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No. 970

In the Supreme Court of the United States

OCTOBER TERM, 1945

ARMOUR FERGUSON, PETITIONER

v.

SULLIVAN DRYDOCK & REPAIR CORPORATION AND ROY GRIFFIN, AS ACTING PRESIDENT AND ACTING TREASURER OF LOCAL 13, INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, C. I. O.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the District Court of the United States for the Eastern District of New York (R. 147–151) is reported in 62 F. Supp. 25. The opinion of the Circuit Court of Appeals for the Second Circuit (R. 181–195) has not yet been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 4, 1946. (R. 195). The peti-

tion for a writ of certiorari was filed on March 19, 1946, and granted on April 1, 1946. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the court below lacked jurisdiction to entertain an appeal by the Union from a money judgment in petitioner's favor against the Corporation, where the Corporation did not appeal from the judgment of the District Court.

2. Whether Section 8 of the Selective Training and Service Act of 1940 gives to a war veteran who, after satisfactory completion of military service and discharge therefrom, has been restored to the position of employment occupied by him prior to his military service, the right to hold that position steadily for a period of one year, even though the displacement of a non-veteran having greater length of service in the plant of their employment will necessarily result.

STATUTE INVOLVED

The pertinent provisions of the Selective Training and Service Act of 1940, as amended, are set out in the Appendix, pp. 46–51.

STATEMENT

Petitioner entered the employ of Sullivan Drydock & Repair Corporation (hereinafter called the Corporation) on December 21, 1942 (R. 168).

He worked for that company at a shipyard operated by it for the construction and repair of vessels until May 22, 1943, when he was inducted into the Army of the United States (R. 168). At the time of his induction he was employed as a welder in a position other than temporary (R. 168). After satisfactorily completing his period of Army training and service he was honorably discharged on July 12, 1944, and received a certificate to that effect (R. 57, 168). Within 40 days after his discharge, being still qualified to perform the duties of a welder, he applied for restoration to his former position and was reemployed on August 25, 1944 (R. 58, 70, 169).

As work slackened in the Corporation's shipyard, the foreman in charge of a particular project would be notified that he would not need a specified number of men on the following day. The men selected by the foreman on the basis of ability and seniority to be laid off (R. 91, 126) would customarily report the following day to the department head for re-assignment whenever work again became available, and would be reassigned on the basis of their relative seniority (R. 86). Recognition of seniority in making reassignments was required by the provisions of a collective bargaining agreement entered into in May 1944, between the Corporation and Local 13 of the Industrial Union of Marine and Ship-

building Workers of America.[1] The testimony indicated that lay-offs of this character are customary in the shipbuilding industry (R. 90–91).

Following his reemployment by the Corporation, petitioner was, on each of nine days in April

[1] Referred to herein as respondent Union or the Union.

Section 6 of Article IV of the collective bargaining agreement of May 1944, provided (R. 32): "Promotions and reclassifications and increases or decreases in the working force shall be based upon length of service and ability to do the job. Wherever between two or more men, ability is fairly equal, length of service shall be the controlling factor." This provision was incorporated by order of the National War Labor Board Shipbuilding Commission (R. 67).

The contract of May 1944 replaced one entered into in April 1942, prior to petitioner's employment with the respondent Corporation, which contained a substantially identical provision governing increases and decreases in working force (R. 65, 72).

Both contracts contained substantially identical clauses covering the reemployment rights of men taken into military service. The agreement of May 1944 provided:

"Any employee other than a probationary employee who is drafted or volunteers for the Naval, Military or Merchant Marine Service of the United States, shall retain his seniority standing. In any further determination of said employee's seniority status, the length of time spent by the employee in such service shall count toward his seniority as if he were actually and continually employed by the Company. Any such employee who volunteers or is drafted must give the Company notice of his intention to so leave his employment. Any such employee who, within forty (40) days after his release or discharge from said service applies for re-employment, shall be rehired by the Company, provided work is available and the employee is reasonably fit for duty. Availability for work will be determined according to accumulated seniority and ability. If re-employed, said employee shall then receive the then current rate of pay for the job in which he is re-employed." (R. 39, 65–66.)

and May 1945, refused work by it, although other welders, not veterans of the second World War, possessing the same or similar skill as petitioner, continued to work on those days (R. 58–64, 169–170). The denial of work to petitioner resulted from a decrease in working force coupled with the provisions of the collective bargaining agreement between the Corporation and the Union, and occurred after respondent Union had protested to the Corporation and had, pursuant to that agreement, procured an arbitrator's opinion supporting its protest, against work being given petitioner in preference to an employee senior to him in service by approximately one month (R. 13–21, 70–71, 73–77).

Thereafter, petitioner, pursuant to Section 8 (c) of the Selective Training and Service Act, commenced this action against the Corporation in the District Court of the United States for the Eastern District of New York to secure a declaratory judgment as to his right under the Act to continuous employment during the year following his restoration to his previous position after completion of his Army service and to obtain compensation for the violations of that right which had already taken place (R. 3–7). Respondent Union was permitted to intervene (R. 46–48). After hearing, the District Court held that petitioner was entitled, during the year following his return from the armed forces, to employment in

preference to all the Corporation's non-veteran employees, including those possessing greater seniority, and entered judgment for plaintiff for $86.40 for his loss of wages on the nine days in question. The court refused the declaratory judgment requested, however, because of the expiration, during the pendency of the proceeding, of the year during which plaintiff was entitled to statutory protection against discharge without cause (R. 147–151, 166–175).[2]

On appeal by respondent Union, the Circuit Court of Appeals, one judge dissenting, reversed the District Court and held that the effect of the Selective Training and Service Act was merely to restore the petitioner to the same place in the job hierarchy that he would have had if he had been on leave of absence during his period of Army service, and that there was no congressional intention to grant the veteran a "step up in seniority" (R. 184). The court interpreted the clause protecting the veteran from discharge without cause for one year as being of value only where the veteran concerned was without the protection of a collective bargaining agreement (R. 185). Judge Chase dissented on the ground that Congress intended to do something more for

[2] The District Court also held that in any event the Corporation had not sustained the burden of proving that the men given employment in preference to petitioner were all senior in service to him (R. 150–151). The Circuit Court of Appeals, however, treated this fact as proved (R. 183).

veterans than give them "the right to have their time in the armed forces counted as time worked for their old employers as they competed with others not displaced by the statute for their old jobs, or ones as good, according to whatever standards of competition their employers and some third party by contract saw fit to impose upon them" (R. 191–192). In the opinion of Judge Chase, petitioner was entitled under the Act to "an actual job with actual pay" for a year after his return from the Army (R. 192).

This Court, when granting certiorari, requested the Solicitor General to file a brief *amicus curiae*. Thereafter, however, petitioner requested the law officers of the Government to represent him, pursuant to Section 8 (c) of the Selective Training and Service Act. The present brief, therefore, is, in accordance with the statutory mandate, filed on behalf of petitioner.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that Sec. 8 (b) and (c) of the Selective Training and Service Act of 1940, as amended, entitled petitioner, after being restored to his original job, to keep it for one year, unless discharged for cause, *only* if his employer had not by contract with a third party, viz., the intervener herein, otherwise agreed.

2. In holding that Sec. 8 (b) and (c) of the Act did not require the defendant-employer to

keep the petitioner at work in preference to other non-veterans having greater seniority than the petitioner, if on any day within a year of his restoration there were not sufficient jobs available for all those applying for work.

3. In holding that the trial court erred in finding as a conclusion of law, that the refusal of the defendant to employ the petitioner on nine days in April and May, 1945, constituted a discharge from his position without cause and a violation of Section 8 (c) of the Act and that the defendant violated the provisions of the Act by not employing the petitioner on each of said days.

4. In holding that the provisions of the Act relating to seniority were not intended to restore the veteran to his former position with any gain in priority.

5. In refusing to give the interpretation of the Director of Selective Service, as expressed in Local Board Memorandum No. 190–A, the same respect and authority that is customarily given like interpretations of statutes by other administrative officers.

6. In minimizing the weight to be given to the legislative history of Section 8 of the Act during its consideration by the Congress.

SUMMARY OF ARGUMENT

Upon petitioner's return from the Army, the Corporation restored him to his position as a welder without loss of seniority. Thereafter, pur-

suant to a contract between the Corporation and respondent Union, petitioner was denied employment on each of nine days, while other welders, non-veterans, continued to work. Petitioner then brought this suit against the Corporation in the District Court, seeking wages for the days on which he had been unemployed and a declaratory judgment as to his rights under the Selective Training and Service Act. Respondent Union was permitted to intervene. The District Court held for petitioner and entered a money judgment in his favor against the Corporation. It did not issue a declaratory judgment as prayed by petitioner. The Corporation took no appeal. Respondent Union, however, appealed and obtained a reversal of the District Court's judgment and dismissal of the complaint.

1. It would appear that the court below lacked jurisdiction to entertain the appeal since respondent Union did not have a sufficient interest in the proceeding to support an appeal from the District Court's judgment. In our view our duty as statutory counsel for the petitioning veteran and as officers of this Court requires that we invite attention to the fact that respondent Union's rights were not affected by the judgment except to the extent that it constituted a precedent adverse to the Union. Such an interest, however, did not give respondent Union sufficient standing to appeal. *Boston Tow Boat Co. v. United States*, 321 U. S. 632. Moreover, after the expiration of the statu-

tory year, no case or controversy between petitioner and respondent Union existed, since at that time petitioner had no future rights under the Act insofar as the matters litigated were concerned.

II. Aside from the question whether the case was properly before the court below, that court erred in its construction of the Selective Training and Service Act. It held that the Act does not entitle veterans of the armed services to a year's full employment, despite the provision in Section 8 (c) that they may not be discharged without cause for one year after restoration to their jobs, if their discharge within that time takes place pursuant to a collective bargaining agreement. The court below failed to construe the Act liberally "to protect those who have been obliged to drop their own affairs to take up the burdens of the nation." See *Boone v. Lightner,* 319 U. S. 561, 575.

The language of the Act is clear. It provides not only for the restoration of the veteran to his former position without loss of seniority, but also that he may not be discharged without cause for one year after such restoration. It makes no distinction between union members and non-members. It ascribes no more meaning to the no-discharge clause in the absence of a collective bargaining agreement than where such an agreement governs the veteran's working conditions. It contains no indication that the provisions of Section 8 were intended by Congress to be sub-

ordinate to any agreement, custom, or established personnel practice. Nor is such indication to be found in the Act's legislative history. On the contrary, Congress, in reenacting the Act, after the Director of Selective Service had interpreted it as requiring reinstatement of a veteran regardless of whether his reinstatement necessitated the discharge of a non-veteran with greater seniority, approved such interpretation and indicated its intention to give full meaning to each clause, including the no-discharge clause, of Section 8, and to assure veterans of work for one year after their discharge from the service.

ARGUMENT

I. THE COURT BELOW LACKED JURISDICTION TO ENTERTAIN AN APPEAL BY THE UNION FROM A MONEY JUDGMENT IN PETITIONER'S FAVOR AGAINST THE CORPORATION

Originally the United States appeared in this case only as *amicus curiae*, to present its views as to the substantive question involved. The petition for certiorari herein was filed by private counsel on behalf of petitioner, and likewise raised only substantive questions. It was only after the preparation of this brief was undertaken by the law officers of the United States on behalf of petitioner, pursuant to Section 8 (e) of the Selective Training and Service Act, that the jurisdictional defect about to be discussed became apparent.

The judgment in the District Court awarded petitioner money damages only against the Corporation. The Corporation did not appeal from that judgment. No relief was granted against the respondent Union, which had only asked dismissal of the complaint. Since legally the judgment did not adversely affect the Union, it had no sufficient interest to support an appeal. It appears, therefore, that the court below was without jurisdiction to entertain the appeal. Moreover, since the statutory year had expired prior to entry of the District Court's judgment, there was no longer any controversy between petitioner and the Union, so that as between them the case was moot.[3]

A. *Respondent Union did not have sufficient interest as an intervener in the District Court to support an appeal from the judgment entered therein.*

Fishgold brought suit against the Corporation in the District Court for a declaratory judgment as to his rights under the Act to continuous employment during the year following his restora-

[3] In *United States* v. *Johnson*, subsequently reported in 319 U. S. 302, this Court entered an order on April 5, 1943 (Journal of the Supreme Court, Oct. T., 1942, p. 195), postponing a decision on jurisdiction until the hearing on the merits, and specifically directed counsel to discuss "* * * (3) whether any case or controversy exists reviewable in this Court, in the absence of an appeal by the party plaintiff defeated in the District Court: * * *". That question was not decided, because pending the hearing the plaintiff filed an appeal which was allowed. Brief for the United States, No. 810, Oct. T., 1942, p. 2.

tion to his previous position and also to obtain money damages as compensation for the violations of that right which had already taken place. The asserted violations consisted of refusing him employment on nine different days, on which days a non-veteran, who presumably had greater seniority than Fishgold, was employed. The local shipbuilding union was permitted to intervene and filed an answer asking that Fishgold's complaint be dismissed. (R. 22–26, 47–48). The District Court entered a money judgment in favor of Fishgold and against the defendant Corporation in the amount of $86.40 (R. 174–175). It declined to grant a declaratory judgment on the ground that the money judgment sufficed in this particular case (R. 150). The Corporation took no appeal from this judgment. The intervening Union filed a notice of appeal from the judgment and served notices of appeal upon counsel for Fishgold and upon counsel for the Corporation (R. 176–177).

It seems clear that in view of the nature of the judgment entered by the District Court the respondent Union had no appealable interest, since the Union was not adversely affected by the judgment entered against the Corporation. No judgment of any kind was entered against the Union. Neither it nor its members were called upon to pay any money or to refund any money as a result of the decision. Fishgold has no future rights under the judgment nor was he granted

any relief against the Union. At the most the District Court entered a judgment which might constitute an unfavorable legal precedent in other cases insofar as the Union's right to enforce the terms of its contract despite the Selective Service Act is concerned. But a party cannot appeal from an abstract legal ruling in the absence of a legal right which is violated. *Boston Tow Boat Co.* v. *United States,* 321 U. S. 632.

It may be accepted as settled law that where intervention has been permitted the intervener may appeal from any judgment or decree which affects his legal interests. 10 Cyc. Fed. Proc., sec. 5006; Moore, *Federal Practice,* sec. 24.11, p. 2371. Typical examples of situations in which the intervener has been held to have sufficient standing to appeal are where intervention was for the purpose of asserting a tax claim against property being foreclosed, *Savannah* v. *Jesup,* 106 U. S. 563; where an injunction was issued against interveners, *Idaho Irrigation Co.* v. *Gooding,* 285 Fed. 453 (C. C. A. 9), affirmed, 265 U. S. 518; where the intervener asserted a right in defendant's property superior to that of plaintiff, *United States* v. *Northwestern Development Co.,* 203 Fed. 960 (C. C. A. 9); and where the intervener asserted title to certain property and asked for an order directing delivery of the property to it, *Dexter Horton National Bank* v. *Hawkins,* 190 Fed. 924 (C. C. A. 9). In these cases the intervener had

a personal or property right directly affected by the judgment from which he appealed. However, unless the intervener's rights are affected by the judgment, he may not appeal and a pre-existing right sufficient to support intervention is not sufficient to support an appeal unless that right is affected by the judgment. See *Hamilton Trust Co.* v. *Cornucopia Mines Co.*, 223 Fed. 494, 499 (C. C. A. 9).

An exception to the foregoing is that where a public official or public body charged with the enforcement or protection of a public right intervenes to assert or protect that right, he may appeal from an adverse judgment because of the adverse effect of the lower court's opinion on the interests of the public. *Securities & Exchange Commission* v. *U. S. Realty Co.*, 310 U. S. 434, 458–460; cf. *Pennsylvania* v. *Williams*, 294 U. S. 176; see Section 1 of the Act of August 24, 1937, c. 754, 50 Stat. 751, 28 U. S. C. 401. Since there is no suggestion in the present record that the Union appeared in any capacity other than a private one, in defense of its own contract, we need not consider whether, in other cases, a local labor union sufficiently represents the public interest to appeal as in the decisions cited.

But the present case does not turn on the peculiarities of intervention. It may be conceded that, once intervention is permitted, an intervener is a party for all purposes. This circumstance, how-

ever, is not decisive of the right to appeal. For if petitioner had sought money damages from the Corporation and the respondent Union, in an action against both of them, and had recovered a money judgment only against the Corporation, it is clear that the respondent Union would have lacked standing to appeal.

The situation here is similar. The judgment has not affected any substantive right of the respondent Union. At most, respondent Union had an interest in the outcome of the litigation between petitioner and the Corporation. But, as this court pointed out in *Boston Tow Boat Co.* v. *United States,* 321 U. S. 632, 633, the mere fact that the outcome of litigation "might establish a precedent" adverse to the intervener is not sufficient to support an appeal by the intervener. See also *Chicago* v. *Chicago Rapid Transit Co.,* 284 U. S. 577, 578; *Alexander Sprunt & Son* v. *United States,* 281 U. S. 249, 255; *International Brotherhood* v. *Keystone Freight Lines,* 123 F. 2d 326 (C. C. A. 10).

Since, therefore, the respondent Union lacked sufficient standing to appeal from the money judgment against the Corporation, that judgment was not properly before the court below. It follows that the failure of that court to dismiss the appeal on its own motion was jurisdictional.

B. *Any controversy between petitioner and the respondent Union became moot after the expiration of the year following petitioner's reemployment*

Petitfoner made no claim below to any right to reemployment or preference or seniority after the expiration of the statutory year. Reinstatement of the judgment for $86.40 will make him whole financially; that plus the employment he had during the remainder of the year afforded him everything which he sought, particularly since his prayer for declaratory judgment related only to one year's employment (R. 7). But his only claim against the Union was that involved in the prayer for a declaratory judgment, assuming as we must that that prayer ran against the intervener once intervention was allowed.

The Union itself sought no declaratory judgment. And, in any event, after the expiration of the statutory year there was nothing against which the judgment prayed for could operate. It was for this reason, among others, that the district court refused to grant a declaratory judgment (R. 150). As between petitioner and respondent, the dispute was moot, and no case or controversy existed.

The money judgment against the Corporation adjudicated no rights as between petitioner and

respondent, and did not adversely affect respondent Union. Petitioner's year of guaranteed employment had passed, and he had no future rights under the Act. He sued as an individual and not in any representative capacity. The Union is consequently free to relitigate the substantive question with any veteran who may hereafter contend that he is entitled to a year of complete and full reemployment notwithstanding the provisions of the union contract which call for employment on the basis of seniority. True, the reasoning of the district court's opinion (R. 147–151) is adverse to the Union's contentions, but mere propositions of law do not amount to a case or controversy within the meaning of Article III of the Constitution. The federal courts do not sit to give advisory opinions to determine abstract questions of law where no real or substantial controversy exists between those who appear as adverse parties to the suit. *Boston Tow Boat Co. v. United States,* 321 U. S. 632; *Coffman* v. *Breeze Corporations,* 323 U. S. 316, 324–325, and cases cited; see also Robertson and Kirkham, *Jurisdiction of the Supreme Court of the United States,* pp. 414–415, 432–435.

We are therefore of the opinion that, since the respondent Union had no standing to appeal the money judgment against another party to the proceeding, and since there is now no case or controversy between respondent Union and petitioner, the judgment below should be reversed

and the cause remanded to the Circuit Court of Appeals with directions to dismiss the Union's appeal for want of jurisdiction and to reinstate the judgment of the District Court.

* * * * *

We have argued the foregoing points because as statutory counsel for petitioner we feel bound to obtain for him the money damages which will make him financially whole and which will give him the benefits to which we believe he is entitled under the Act of Congress involved. Our duty as officers of this Court would have required us in any event to point out what appears to us to be a plain defect of jurisdiction.

We are aware, of course, of the public interest in an early resolution of the substantive question involved, which affects or may affect the rights of large numbers of ex-service men, of many unions, and of the many employers who have entered into collective bargaining agreements similar to the one here in question. We are in consequence anxious to have this Court decide the case on the merits if it has jurisdiction to do so.

II. THE COURT BELOW ERRONEOUSLY INTERPRETED THE SELECTIVE TRAINING AND SERVICE ACT AS PERMITTING THE CORPORATION TO DENY A VETERAN FULL EMPLOYMENT WITH FULL PAY DURING THE STATUTORY YEAR

The Selective Training and Service Act of 1940 was enacted by Congress at a time when it was becoming increasingly clear that the effective de-

fense of this country in a world at war required the training of the manpower of the nation to meet any emergency which might arise. While, at the time of its enactment in September 1940 it was still hoped that the United States might avoid participation in the war, it was recognized that the possibility of war was great. That was why the Army was being expanded. Congress recognized that the young men called to serve in the armed forces of their country would be subjected to hardships, in particular, to the immediate hardship of being required to leave their jobs and, unless some provision were made therefor, to have no jobs to which to return. It was in order to cushion the impact of those economic hardships that Congress passed Section 8 of the Act.

It is paragraphs (b) and (c) of that section that are here involved. Section 8 (b) as amended provides in substance that any person inducted into the armed forces who completes his training and service therein and receives a certificate to that effect, who left "a position, other than a temporary position," in order to go into the armed forces and who "is still qualified to perform the duties of such position," and who makes application for reemployment within 90 days[4] after he is relieved from training and service, shall be restored by

[4] At the time petitioner applied for reemployment, application for reemployment was required within 40 days.

the employer in whose employ he was "to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so".

Section 8 (c) provides that any person so "restored" "shall be considered as having been on furlough or leave of absence" while in the armed forces, "shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such service, and shall not be discharged from such position without cause within one year after such restoration."

The question presented requires the determination of the congressional intention in enacting Section 8 (b) and (c). Such intention must be determined not only in view of the considerations in the congressional mind at the time it enacted the Selective Training and Service Act in 1940, but also its intent when it re-enacted the statute in 1945: The necessity for building a vast army of trained men; the necessity, in so doing, for calling upon the entire citizenry; and the necessity for mitigating, to the extent possible, the sacrifice demanded of those selected for training and service, th latter necessary not only from the stand-

point of the men themselves but also from the standpoint of building an army of sound morale which would thereby better be able to defend the country in time of need. See 86 Cong. Rec. 10573. In view of these considerations, the Act must be "liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation". See *Boone* v. *Lightner*, 319 U. S. 561, 575. See also *Trailmobile Co.* v. *Whirls*, C. C. A. 6, decided April 5, 1946, C. C. H. Labor Law Ser., Par. 63,080.

A. *Section 8 (b) and (c) clearly require restoration of the veteran to, and his retention for one year in, actual employment regardless of his seniority if the work he previously performed is still being done*

Petitioner, upon completing his Army service and making due application for reemployment by the Corporation, was restored to his position as a welder as required by Section 8 (b) of the Act. Thereafter, within one year after his restoration, petitioner was refused employment by the Corporation on each of nine days on which, because of lack of work, it reduced the number of welders in its employ. This reduction was effected in accordance with a collective bargaining agreement between the Corporation and respondent Union, pursuant to which the Corporation was required, in substance, to lay off junior employees before senior employees. See *supra*, pp. 3–5. None of the

welders who continued to work for the Corporation when petitioner was denied employment was a veteran of World War II.

The refusal of the Corporation to employ petitioner on each of these nine days constituted a discharge of petitioner without cause within the meaning of Section 8 (c) of the Selective Training and Service Act of 1940. Since it occurred within one year after petitioner's restoration to the position he had held prior to his induction, it was a violation of the Act, and petitioner was entitled to recover the wages he lost thereby. As long as welding work was being performed for the Corporation, the Selective Training and Service Act required it to prefer petitioner to all others (except other veterans of World War II) for such work for a year after his return, regardless of collective bargaining agreement, custom, or other established practice to the contrary, purporting to entitle others to preference over petitioner. In brief, under the Act, service in the armed forces must, for one year, be given more weight than seniority, ability, or any of the other criteria which an employer might otherwise use in determining who is to be discharged when decreases in working force become necessary.

This right of petitioner to employment for the year following his return does not, as the court below indicated it must (R. 184), rest upon any claim that the Act requires any improvement in

his seniority position, but upon the provisions of the Act which, in addition to protecting the veteran from "loss of seniority" due to his service in the Army, give him an unconditional right to be retained in his job for a year following his return unless discharged for cause.

The Act is clear. Section 8 (b) requires that the veteran be restored to his job. Section 8 (c) defines what he is entitled to in addition to mere restoration: (1) to "be considered as having been on furlough or leave of absence" while in the armed forces, (2) to be "restored without loss of seniority", (3) "to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time" of induction into the armed forces, and (4) not to be "discharged from such position without cause within one year after such restoration." Having been restored to his position without loss of seniority, petitioner does not claim that he was entitled to any greater seniority than he was recognized by the Corporation as having. That was petitioner's seniority for all purposes. But it could not control when he should be laid off until after one year had elapsed from his restoration to his position. During that year, petitioner was entitled to employment whether he had great or little seniority status. This did not result from a "step-up" in petitioner's seniority (cf. R.

184); it did not result from his having "super-seniority"; it resulted from the fact that Congress has specifically provided, in Section 8 (c), that in addition to all other rights which petitioner, as a reemployed veteran, had in his job, he had the right to be employed for one year so long as there was work to be done. If lay-offs in the Corporation's plant are made on a seniority basis, petitioner's seniority governs when he shall be laid off only after the expiration of the year's employment which Section 8 guaranteed him.

Respondent Union contended below that the right not to be discharged without cause for one year did not protect petitioner against temporary loss of work. But giving the language of the Act its plain meaning, it is clear that any denial to petitioner of work during the year following his return from the Army, unless for cause, violated its provisions, no matter what such denial is called, whether it took the form of a permanent discharge or lay-off. While in other situations and for other purposes a lay-off may be differentiated from a permanent discharge, in the framework of Section 8 of the Act any distinction between the two is not only irrelevant but also defeats the purpose of the Act to give the veteran a year's time in which to re-acquire his lost skills and resume his place in the competitive world. This purpose can be accomplished only by recognizing that the right of the veteran is a right to work, not the right to a place on a

waiting list, and that any personnel practice of an employer, whether or not founded on a contract or other private undertaking or agreement, which denies work to the veteran within a year of his restoration and relegates him to a waiting list, denies him the right to work guaranteed by Section 8 (c)[5] From this standpoint also, it is as much a denial of work to the veteran under Section 8 (c) to deny him work for one day or for nine days, as in petitioner's case, as it is to deny him work for nine months. Cf. *Droste* v. *Nash-Kelvinator Corporation, et al.* decided Jan. 30, 1946 (E. D., Mich.), C. C. H. Labor Law Ser., Par. 62,947.

Respondent Union contends and the Court below held that where petitioner was denied work during the year following his return from the

[5] See Judge Chase's dissent (R. 193):

"Congress was here prohibiting not merely discharge from employment but discharge from 'such position.' It did not leave the employer free to 'lay-off' the reemployed veteran at will, or to shift him from one position to another not as good, or otherwise deprive him of the particular kind of work and pay to which he had been 'restored.' It gave the veteran a year of security in this position before he could be ousted from it simply because someone had a contract with the employer which, but for the statute, gave him a senior right to it. To deny the veteran the right to work in that position during the year is a 'discharge' from it for the period of his deprivation and calling such action a 'lay-off' or anything else one may choose for a name neither alters the fact nor justifies the action. Such a choice of labels is simply what should be recognized as a futile attempt to circumvent the statute."

service because of the fact that reductions based on seniority were made in his employer's working force, his rights under the Act were not violated if he had been restored to his position "without loss of seniority"; that having been so restored, he received all the benefits that Congress in enacting Section 8 (b) and (c) intended that he should have.[6]

This construction, however, gives no meaning to the provision in Section 8 (c) that a veteran such as petitioner who has been restored to his position without loss of seniority "shall not be discharged from such position without cause within one year after such restoration". A mere reading of Section 8 (b) and (c) makes it clear that that clause gives the reemployed veteran something additional to the other rights given him by that section—one year's employment from the time of restoration to his position.

This additional right clearly cannot be deemed to be cut down or limited by the petitioner's separate and independent right to have the time he spent in the Army credited toward his seniority. Petitioner does not deny that, as the court below held, the Act did not grant any step-up in senior-

[6] Two other courts have given the same treatment to the problem and come to the same conclusion. *Droste* v. *Nash-Kelvinator Corp., et al.*, decided January 30, 1946 (E. D. Mich.), C. C. H. Labor Law Ser., Par. 62,947. *Olin Industries* v. *Barnett, et al.*, decided January 24, 1946 (S. D. Ill.), C. C. H. Labor Law Ser., Par. 62,935. But cf. *Trailmobile Co.* v. *Whirls* (C. C. A. 6), *supra*.

ity (R. 184). The issue in this case is not whether petitioner returned from the service with a "step-up" in seniority but whether the seniority rights of others, entitling them either by custom or agreement to preference over him for employment, could limit the right to employment for a year given him by the Act. The court below held that it could be so limited. As stated by the dissenting judge below (R. 191), the majority held that the right to employment for a year given the veteran by the Act entitles him to employment "only if his employer has not by contract with a third party otherwise agreed"—in brief, that where the employer has agreed to give more weight to seniority than to service in the armed forces in making reductions in his personnel, the private agreement and not the Act of Congress controls.

But the assumption that the veteran's right to employment for a year can have any limitations placed on it other than those expressed in the Act and that the employer may cut it down or abridge it by engaging in personnel practices founded in contract runs counter to both the letter and spirit of the Act. If the veteran's right to employment for a year can be subordinated by virtue of a collective bargaining agreement to the rights of non-veterans senior to him in the company's employ, the protection accorded the veteran by the Act is largely illusory. If such an agreement can make seniority more significant than service in the

armed forces in determining a veteran's right to employment as against a non-veteran, it can do the same for other factors in the employment relationship, such as union membership or relative ability. Moreover, if rights under the Act can be limited by union agreement, no reason appears, despite the contrary implication below, why they cannot be limited by an employer's self-imposed personnel practices. For there is nowhere to be found in the Selective Training and Service Act any indication that veterans are to be treated differently, depending upon whether or not they are covered by collective bargaining agreements; that only those not so covered are entitled to the full protection of the Act, while others are afforded only such protection as the union's collective bargaining efforts may obtain for them, whether greater or less than that afforded by the Act. Compare R. 185. On the contrary, all the indications are that the Act declares a congressional reemployment policy, applicable alike to all veterans, regardless of the existence of a collective bargaining relationship or other private arrangement between a union and their employer.

Since, therefore, there is no basis for distinguishing between employment practices based on a collective bargaining agreement and those not so based, the result of the decision below is to subject the veteran to the usual hazards of employment. A veteran would thus be no better

protected against an employer's established practice of preferring local employees to transients, married men to bachelors, women to men, than the court below held he is protected against the practice of preferring senior to junior employees.[7] All the Act does for him, as interpreted below, is to assure him that his military service will not count against him and that he will nof be penalized for the time he spent in the service of his country.

Clearly such negative assistance was not what Congress intended. The Act was designed to afford an affirmative benefit to the veterans. It was drawn so as to assure him of a year's employment in which to regain his lost skills and reestablish himself economically, and to protect him against discrimination in any of the incidents of his employment relationship as a result of his service in the armed forces. *Kay* v. *General Cable Corp.*, 144 F. (2) 653, 654 (C. C. A. 3); *MacMillan* v. *Montecito Country Club, Inc.*, decided March 29, 1946 (S. D. Cal.), C. C. H. Labor Law Ser., Par. 63,054.

Each of the rights conferred on veterans by Section 8 (c) is a "separate, distinct and independent benefit". See *Trailmobile Company* v. *Whirls*, C. C. A. 6, decided April 5, 1946. Each

[7] While seniority systems are common in industry, the Act contains no indication that commonly accepted practices take precedence over the clear provisions of Section 8 (b) and (c) where they conflict with those provisions.

differs slightly from the others. Only the no-discharge provision is limited to a year's duration. To say, as did the court below, that petitioner could be laid off within one year of restoration to his position without loss of seniority, so long as he was laid off in accordance with the seniority system observed by respondents, gives effect only to those provisions of Section 8 of the Act which require job restoration without loss of seniority. It gives no effect to the prohibition in Section 8 (c) against discharging the restored veteran within one year of restoration. It fails to recognize the congressional intent to assure each member of the armed forces and each prospective member that for one year after restoration to his job he would, without regard to seniority and with regard only to the availability of work, be afforded employment, an opportunity to reacquire skills lost during his period of service, a chance to reestablish himself on a sound economic basis as a member of the community. This right which the Act gives the veteran is in addition to, and independent of, the separate and distinct right given him to be restored without loss of seniority. One right does not impair or limit the other. Both are of value. After the veteran's statutory right to employment for a year has expired, reliance on his seniority position may be necessary to assure his right to work. Cf. *Trailmobile Co.*

v. *Whirls, supra.* But until that year has elapsed, he cannot be denied employment because of that seniority position.

The decision below thus invokes one of the rights given the veteran by the Act, the right to be restored without loss of seniority, to cut down the main grant, the right to employment for a year. But the Act permits discharge within the year only "for cause" and respondents have never contended that any "cause" existed for petitioner's discharge other than the provisions of a collective bargaining agreement entered into subsequent to the enactment of the Act. Clearly, neither the Corporation's contractual arrangements nor other personnel practices can override the statutory purpose and direction or serve as "cause" to justify petitioner's layoff. The court below, while recognizing "the claims of those who stood by the nation in the hour of its need" (R. 190–191), concluded that the language of the Act compelled an interpretation giving them what "may appear an altogether inadequate equivalent for their services" (R. 186). The contrary is true. It is only by ignoring the unequivocal language protecting the veteran from discharge without cause for a year and by grafting on his right to employment limitations *dehors* the language of the Act that the court below was able to reach the erroneous result it did.

B. *The legislative history of the Selective Training and Service Act of 1940 supports the view that petitioner was entitled to one year's employment regardless of his seniority.*

The legislative history of the Act does not disclose any congressional intention inconsistent with the statute's language. It furnishes no evidence of a congressional intent merely to restore veterans to their jobs without loss of seniority; to protect veterans in their jobs for one year after restoration only if they are not covered by collective bargaining agreements and leave others to seek their protection in such agreements; or to give a minimal meaning only to the no-discharge clause in Section 8 (c). On the contrary, recourse to the legislative history reinforces the conclusion derived from the language of the Act: that its purpose is, primarily, to secure the veteran's right for a year to work at the job he left in order to enter the armed forces and, secondarily, to assure him that whatever rights or privileges he had at such employment would not be prejudiced by reason of his service in the armed forces.

The Selective Training and Service Act as originally introduced contained no provision for the reemployment of servicemen on their release from service. S. 4164 and H. R. 10132, 76th Cong., 3rd Sess. Such a provision was first incorporated into the bill while it was being considered in committee.

The first draft of the bill prepared by the Senate Military Affairs Committee expressed it to be merely "the purpose and intent of Congress that every man who is called from a job * * * ought to be reemployed in such job or an equally good one without loss of seniority * * *." Committee Print No. 1, July 23, 1940. In the fourth committee draft, reemployment was directed to be "without loss of seniority or benefits or insurance participation or benefits." Committee Print No. 4, July 27, 1940. In this draft, also, the rights of the veteran on restoration (Section 8 (c)) were made the subject of a separate paragraph from that directing his reemployment (Section 8 (b)). Most significant of all, however, was the change from precatory to mandatory language and, with such change, the appearance for the first time of the provision against discharge without cause for a year. Clearly, now that the bill was no longer hortatory only, Congress was concerned with placing a time limit on certain of the privileges and obligations it created.* In the sixth draft, a remedy in the

* It is significant that although it was pointed out to the House Committee on Military Affairs in a memorandum submitted by the National Association of Manufacturers (Hearing before House Committee on Military Affairs on H. R. 10132, 76th Cong., 3d Sess., p. 633) that the reemployment provisions, as drafted, would require dismissal of a non-veteran with greater seniority in order to retain the veteran, no change was made in the language of these provisions by the Committee.

courts for the enforcement of the restoration provisions was added. (Section 8 (e)), Committee Print No. 6, August 1, 1940.

Throughout the evolution of Section 8 in committee, from a simple expression of intention to a command backed by effective sanctions, its purpose continued to be that "every man called from a job" should be "reemployed in such job." It was so described in the committee report which speaks of these provisions as declaring the purpose and intent of Congress "That every man who leaves his job to participate in this training and service should be reemployed without loss of seniority or other benefits upon his return to civil life." S. Rep. 2002, 76th Cong., 3rd Sess., p. 8.

Chairman Sheppard of the Senate Military Affairs Committee used similar language in describing identical provisions in the National Guard Act, saying that "it was the sense of the Senate Military Affairs Committee that an effort should be made to restore persons ordered into service to their former employment at the end of their training or to employment of similar pay and status." 86 Cong. Rec. 9836.

Senator Thomas, another member of the Senate Military Affairs Committee, referred to Section 8 as "the attempt of the committee to make secure persons' jobs after the year's service." 86 Cong. Rec. 10572. Almost identical language was used by Representative Celler in explaining the com-

panion House Bill. Under it, he said, "All those who serve shall have the right to claim return to their jobs." 86 Cong. Rec. 11435.

A similar understanding that the direction to restore the veteran to his previous position meant to his previous job or employment is reflected in the comments of almost every Congressman who discussed the question.[9] They described the provision variously as directing the employer to "rehire" (86 Cong. Rec., 10107); as a provision to "conscript" the servicemen's "jobs" (86 Cong. Rec. 10487); and as securing "reemployment" (86 Cong. Rec. 11697).

As these various statements show, the portions of the bill which became Section 8 of the Act were regarded as dealing primarily with employment. The veteran was to be restored for a year to the job from which he had been inducted. Language appropriate to accomplish this purpose was employed. The employer was directed to restore the veteran to the position he left. And by "position" was meant an actual employment relationship and not merely status or a contingent right

[9] Common agreement upon the general purpose of an act may be shown by reference to the congressional debates therein (*United States* v. *San Francisco*, 310 U. S. 16, 22), although ordinarily, of course, isolated statements made by an individual member of Congress during debates are not entitled to weight in determining the construction put upon the language by that body. *United States* v. *Trans-Missouri Freight Ass'n*, 166 U. S. 290, 318; *Duplex Printing Co.* v. *Deering*, 254 U. S. 443, 474.

to employment. So "position" is referred to in the Act as a "position * * * in the *employ* of any employer" (Sec. 8 (b)). The veteran obtains it back by making "application for *reemployment*" (*ibid*). He may not claim it, however, unless he is "still qualified to *perform* the duties of such position" (*ibid*). If the position he left is unavailable, he must be given a "position of like seniority, status, and *pay*." *Ibid*. [Italics added.]

Congress, having thus assured the veteran of return to his previous employment, was also concerned, however, that he should not upon his return be prejudiced in whatever rights and privileges he had gained as a result of working, and to this end inserted specific provisions in the Act. The veteran was to be guaranteed first, restoration to his previous employment; second, retention therein for at least one year; and third, protection in other incidents of his employment, including his seniority position.

As the bill emerged from the Senate committee it reflected these various purposes. In addition to directing the restoration of the veteran to his own position or to one of "like status and pay", and prohibiting his discharge without cause within one year after his restoration, it provided that such restoration should be without "loss of seniority, insurance participation or benefits, or other

benefits". S. Rep. No. 2002, 76th Cong., 3d Sess., p. 4.

It was feared, however, that these directions were not sufficiently explicit and amendments were introduced designed to strengthen the protection given the returning servicemen. With this end in view the House Military Affairs Committee insisted on the insertion of the word "seniority" before the words "status and pay" in the description of the position to which the veteran was to be restored in the event that the one he left was not available.[10] The purpose of the change as described by the House Managers after the change had been agreed upon in conference was to provide for preserving the seniority of returning servicemen as well as their status and pay. H. Rep. No. 2874, 76th Cong., 3d Sess., p. 5. Its purpose was similarly described by Representative May (86 Cong. Rec. 10761):

> You will find that in amendments numbered 12, 13, and 14 the House inserted the word "seniority" relating to a position held by the guardsman. It is inserted in three places, and provides that he shall be restored to his seniority status. In other words, if a man is a Civil Service employee in the Government of the United

[10] This change was made first in the National Guard Act, 54 Stat. 858 (50 U. S. C. App. § 401 *et seq.*), which was under consideration simultaneously with the Selective Training and Service Act, and was then incorporated without further consideration into the latter.

> States and is called into service, he shall be restored on his return to the senior position he held before he left without losing that seniority position. Likewise, with a railroad employee, under a system of seniority rights on the railroad that gives the older men in the service priority over the others, that man when he returns shall be restored to his seniority position.

Subsection (c) was also amended in order to ensure that the seniority rights of inducted men were adequately protected. It was changed to read as follows, the italicized portions indicating the added and amended language (86 Cong. Rec. 10914, 11702):

> Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) *shall be considered during the period of service in such forces as on furlough or leave of absence;* and shall be so restored without loss of seniority; and *shall be entitled to participate in* insurance or other benefits *offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time of being inducted into such forces,* and shall not be discharged from such position without cause within 1 year after such restoration.

The purpose of this change was explained by Representative May, speaking for the House

Committee on Military Affairs which proposed the amendment, as follows (86 Cong. Rec. 11702):

> I may say that the chief purpose of the amendment is to preserve the seniority rights of the thousands and hundreds of thousands of railroad employees and other employees of that character who have certain seniority privileges on the railroads. In other words, we put them on furlough during the time they are in the service and they will even be permitted to count this time on the question of their retirement.

Senator Sheppard, who spoke for the amendment in the Senate, likewise indicated that the change was intended to give additional protection to the veteran. He said:

> That amendment would make certain that all trainees would receive the same insurance and other benefits as those who are on furlough or leave of absence in private life. It seems to me to be a good suggestion. (86 Cong. Rec. 10914.)

As these statements plainly show, the provisions of section 8 (c) referring to seniority were intended to add to and not cut down the right of the veteran to a job on his return from the armed forces,—to increase the protection the Act gave servicemen on their return. They, therefore, cannot be used as limiting or derogating from the veteran's right to reemployment.

III. CONGRESS, IN REENACTING THE SELECTIVE TRAINING AND SERVICE ACT, APPROVED THE ADMINISTRATIVE INTERPRETATION THAT A VETERAN IS ENTITLED TO HIS JOB REGARDLESS OF HIS SENIORITY

The Director of Selective Service is charged with establishing a Personnel Division to aid former members of the armed forces in securing reinstatement in their positions. Section 8 (g). By Executive Order 8545, dated September 23, 1940 (5 F. R. 3779), he was authorized to administer the Act and "to issue such public notices, orders, and instructions as shall be necessary to the efficient administration of the selective service law * * *". Pursuant to such authority, the Director, on May 20, 1944, issued Local Board Memorandum 190–A, interpreting the Act to require reinstatement of a veteran to "his former position or one of like seniority, status, and pay even though such reinstatement necessitates the discharge of a non-veteran with a greater seniority." Part IV, Section 1 (c).[16] While the Director's judgment as to the meaning of Section 8 may not be controlling, it is that of an informed

[16] Local Board Memorandum 190–A was issued for the instruction and guidance of the Local Boards and reemployment committeemen, in connection with the performance of their function under Section 8 (g) of the Act of rendering assistance to veterans seeking replacement in their former positions. The principles which it enunciated have since been incorporated into Part III of a Handbook published by the Selective Service System which, as stated in its introduction, "presents the official statement of policy, operating procedure, and interpretation of the Veterans Assistance Program of the Selective Service System."

administrative official entrusted with the duty of administering the Act and may properly be resorted to for guidance. Cf. *Skidmore* v. *Swift & Co.*, 323 U. S. 134.

The foregoing interpretation of the Director was specifically called to the attention of a special sub-committee of the House Committee on Military Affairs on September 12, 1944, in the course of testimony by Colonel Keesling, the chief liaison and legislative officer of the Selective Service System. Report of Hearings before a Special Subcommittee of Committee on Military Affairs of the House of Representatives, 78th Cong., 2nd Sess., September 12, 1944, pp. 8–9. Six days later, a bill (H. R. 5386, 78th Cong., 2nd Sess.) was introduced, 90 Cong. Rec. 7863, enlarging the time within which veterans might apply for reemployment. In the Congressional consideration of that bill, which became the Act of December 8, 1944, c. 548, 58 Stat. 798, no attempt was made to alter other language of Section 8 so as to overrule the interpretation given it by the Director of Selective Service in Local Board Memorandum 190–A. Cf. *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 474.

Moreover, that interpretation was brought to the attention of the Senate Committee on Military Affairs prior to the reenactment without change of the Act.[12] Yet less than two months later,

[12] Hearings before Senate Committee on Military Affairs on S. 36 and H. R. 1752, 79th Cong., 1st Sess., p. 214.

Further evidence that Congress itself considered the Selective Training and Service Act to do more than return the

Senator Thomas, as Chairman of the Senate Committee on Military Affairs, submitted a report recommending extension of the Selective Training and Service Act without change. S. Rep. 126, 79th Cong., 1st Sess., 91 Cong. Rec. 2801. On May 9, 1945, nearly a full year after issuance of Memorandum 190-A, Congress extended the Act without changing any of the provisions of Section 8 (Pub. L. 54, 79th Cong., May 9, 1945). We submit that such reenactment evidences congressional acquiescence in and approval of the administra-

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veteran to the same relative position he had before induction is supplied by the debates on the "work or fight" bill (H. R. 1752, 79th Cong., 1st Sess.). As that bill passed the Senate, the following appeared with reference to the reemployment rights of civilian workers "drafted" under the bill:

"Provided that this section shall not be construed to confer greater employment rights than the individual would have had if he had remained employed in such position during the period of the employment or employments accepted by him upon the request of the Chairman of the War Manpower Commission."

When explaining this proviso to the Senate, Senator Thomas said (91 Cong. Rec. 1423):

"The reemployment rights so provided are substantially those provided for veterans in Section 8 of the Selective Service and Training Act, with two exceptions: First, * * * (application for reemployment must be filed within 30 days) * * *; and second, civilians accorded reemployment rights under this bill are not to secure greater employment rights than they would have had if they had remained in their original positions for the period during which they are employed in jobs accepted by them under the bill."

See also 91 Cong. Rec. 1551. Obviously there would have been no occasion for inclusion of the above proviso if Section 8 had been thought to have the effect indicated by the court below.

tive construction placed upon the Act by the Director of Selective Service:[13] *McCaughn* v. *Hershey Choc. Co.*, 283 U. S. 488, *Mass. Mutual Life Ins. Co.* v. *United States*, 288 U. S. 269, 273; *National Lead Co.* v. *United States*, 252 U. S. 140–146.

It is clear, moreover, even aside from the fact of legislative ratification of the administrative construction of the Act, that such construction is the only one which renders none of its language superfluous and which is entirely consonant with the congressional purpose. The decision below drains the provision prohibiting discharge of the veteran without cause for a year of all vitality; makes the statutory right of the veteran to employment for a year subordinate to the rights of other employees established by collective bargaining agreements; discriminates between veterans returning to employment in unionized industry and those

[13] The court below noted (R. 187) that the National War Labor Board and the Solicitor of the Department of Labor had adopted a view different from that of the Director of Selective Service with respect to veterans' reemployment rights under Section 8 of the Act. The court said that it "would be baseless in fact" "to suppose that Congress," in reenacting the Act, "was familiar with one set of rulings and not with the other" (R. 190). But this overlooks the fact that the Director of Selective Service was the only administrative official among those who had interpreted the Act who had any responsibility for its administration or enforcement. His interpretation alone, therefore, comes within the rule that reenactment by the legislature of language which has been administratively construed results in the legislative ratification and adoption of such construction.

returning to non-unionized employment; and leaves the veteran, after service in the armed forces, with no greater right to employment than would have been his had he never entered the service of his country. But if the policy of the Act is to be served and its language honored, the veteran must be recognized as having for one year a right to employment superior to all others. It is only in this way that he can regain the competitive position he left in order to serve his country. It cannot be done by placing the veteran, disadvantaged as he is by his period of service, in open competition with those who have made no similar sacrifice.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below is erroneous and should be reversed.

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APPENDIX

The Selective Training and Service Act of 1940 as originally enacted September 16, 1940, c. 720, 54 Stat. 885, 50 U. S. C. App. 301 *et seq.*, provided in part as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* (a) the Congress hereby declares that it is imperative to increase and train the personnel of the armed forces of the United States.
>
> (b) The Congress further declares that in a free society the obligations and privileges of military training and service should be shared generally in accordance with a fair and just system of selective compulsory military training and service.
>
> * * * * *
>
> SEC. 8. (a) Any person inducted into the land or naval forces under this Act for training and service, who, in the judgment of those in authority over him, satisfactorily completes his period of training and service under section 3 (b) shall be entitled to a certificate to that effect upon the completion of such period of training and service, which shall include a record of any special proficiency or merit attained. * * *
>
> (b) In the case of any such person who, in order to perform such training and service, has left or leaves a position, other than a temporary position, in the employ of any employer and who (1) receives such certificate, (2) is still qualified to perform the duties of such position, and (3) makes ap-

plication for reemployment within forty days after he is relieved from such training and service—

(A) if such position was in the employ of the United States Government, its Territories or possessions, or the District of Columbia, such person shall be restored to such position or to a position of like seniority, status, and pay;

(B) if such position was in the employ of a private employer, such employer shall restore such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so;

* * * * * *

(c) Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration.

* * * * * *

"(e) In case any private employer fails or refuses to comply with the provisions of subsection (b) or subsection (c), the district court of the United States for the district in which such private employer maintains a place of business shall have

power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of such provisions, to specifically require such employer to comply with such provisions, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action. The court shall order a speedy hearing in any such case and shall advance it on the calendar. Upon application to the United States district attorney or comparable official for the district in which such private employer maintains a place of business, by any person claiming to be entitled to the benefits of such provisions, such United States district attorney or official, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof to specifically require such employer to comply with such provisions: *Provided*, That no fees or court costs shall be taxed against the person so applying for such benefits.

* * * * *

(g) The Director of Selective Service herein provided for shall establish a Personnel Division with adequate facilities to render aid in the replacement in their former positions of, or in securing positions for, members of the reserve components of the land and naval forces of the United States who have satisfactorily completed any period of active duty, and persons who have satisfactorily completed

any period of their training and service under this Act.

* * * * *

SEC. 10. (a) The President is authorized—

(1) To prescribe the necessary rules and regulations to carry out the provisions of this Act;

(2) to create and establish a Selective Service System * * *.

(3) To appoint, by and with the advice and consent of the Senate, and fix the compensation at a rate not in excess of $10,000 per annum, of a Director of Selective Service * * *.

(b) The President is further authorized, under such rules and regulations as he may prescribe, to delegate and provide for the delegation of any authority vested in him under this Act to such officers, agents, or persons as he may designate or appoint for such purpose or as may be designated or appointed for such purpose pursuant to such rules and regulations as he may prescribe.

* * * * *

SEC. 16. (a) Except as provided in this Act, all laws and parts of laws in conflict with the provisions of this Act are hereby suspended to the extent of such conflict for the period in which this Act shall be in force.

(b) All the provisions of this Act, except the provisions of sections * * * 8 (g) * * * shall become inoperative and cease to apply on and after May 15, 1945 * * *.

By Act of December 5, 1943, c. 342, § 3, 57 Stat. 596, 50 U. S. C. App. § 310 (Supp. IV), Sec-

tion 10 (b) of the Selective Training and Service Act of 1940 was amended to read as follows:

> (b) The President is authorized to delegate to the Director of Selective Service only, any authority vested in him under this Act (except Section 9) * * *.

By Act of December 8, 1944, c. 548, 58 Stat. 798, 50 U. S. C. App. § 308 (Supp. IV), Section 8 (b) of the Selective Training and Service Act of 1940 was amended to read as follows:

> (b) In the case of any such person who, in order to perform such training and service, has left or leaves a position, other than a temporary position, in the employ of any employer and who (1) receives such certificate, (2) is still qualified to perform the duties of such position, and (3) makes application for reemployment within ninety days after he is relieved from such training and service or from hospitalization continuing after discharge for a period of not more than than one year—
>
> (A) if such position was in the employ of the United States Government, its Territories or possessions, or the District of Columbia, such person shall be restored to such position or to a position of like seniority, status, and pay;
>
> (B) if such position was in the employ of a private employer, such employer shall restore such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so; * * *

By Act of May 9, 1945, Public No. 54, 79th Cong., 1st Sess., c. 112, Section 16 (b) of the

Selective Training and Service Act of 1940 was amended to read as follows:

> (b) All the provisions of this Act, except the provisions of sections * * * 8 (g) * * * shall become inoperative and cease to apply on and after May 15, 1946, or the date of the termination of hostilities in the present war, or on such earlier date as may be specified in a concurrent resolution of the two Houses of Congress for that purpose, * * * As used in this section the term "date of the termination of hostilities in the present war" means the date proclaimed by the President as the date of such termination or the date specified in a concurrent resolution of the two Houses of Congress as the date of such termination, whichever is the earlier.

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